



CITY OF MILWAUKIE

May 2, 2018

Land Use File(s): VR-2018-004

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on May 2, 2018.

Applicant(s):	Jake and Laura Autry
Location(s):	9499 SE 44th Ct
Tax Lot(s):	12E30CB00701
Application Type(s):	Variance
Decision:	Approved
Review Criteria:	<u>Milwaukie Zoning Ordinance:</u> <ul style="list-style-type: none">• MMC 19.301 Low Density Residential Zones• MMC 19.911 Variances
Neighborhood(s):	Lewelling

Appeal period closes: 5:00 p.m., May 17, 2018

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1005 Type II Review. The complete case file for this application is available for review between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Vera Kolas, Associate Planner, at 503-786-7653 or koliasv@milwaukieoregon.gov, if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/vr-2018-004>.

This decision may be appealed by 5:00 p.m. on May 17, 2018, which is 15 days from the date of this decision.¹ Any person who is adversely affected or aggrieved by this decision may appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie Planning Commission following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period.

¹ As per MMC Section 19.1010, if the 15th day falls on a weekend or legal holiday, the end of the appeal period shall be extended to the end of the next business day.

Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or planning@milwaukieoregon.gov.

Per MMC Subsection 19.1001.7.E, this land use approval expires unless the applicant has: (1) obtained and paid for all necessary development permits and started construction within 2 years of land use approval, and (2) passed final inspection and/or obtained a certificate of occupancy within 4 years of land use approval. Extensions can be granted per MMC Section 19.908.

Findings in Support of Approval

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicants, Jake and Laura Autry, have applied for a variance to allow the minimum front and rear yard setbacks to be reduced from 20 ft to 15 ft at 9499 SE 44th Ct. This site is in the Residential R-7 Zone. The land use application file number is VR-2018-004.
2. The proposal requires a variance from the minimum front and rear yard setbacks.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 19.301 Low Density Residential Zones
 - MMC 19.911 Variances
4. The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review, with a decision by the Planning Director.
5. MMC 19.301 Low Density Zones
 - a. MMC 19.301 establishes the development standards that are applicable to this site. Table 1 summarizes the existing and proposed conditions on the subject property with respect to the standards relevant to this proposal.

Table 1. Compliance with relevant R-7 standards

R-7 Zone	Standards	Existing	Proposed
Minimum lot size	7,000 sq ft	9,887 sq ft	9,887 sq ft
Front Yard Setback	20 ft	N/A	15 ft (variance requested)
Rear Yard Setback	20 ft	N/A	15 ft (variance requested)
Side Yard Setback	5 ft/10 ft	N/A	5 ft/99 ft

Subject to a Type II variance, the proposal complies with the applicable standards of the R-7 zone.

6. MMC 19.911 Variances

- a. MMC 19.911.3 establishes the review process for variance applications.

The applicant has requested a variance to reduce the minimum front and rear yard setbacks from 20 ft to 15 ft. This request meets the allowable variance of 25% permitted through Type II review.

The Planning Director finds that the application is subject to Type II Variance review for the proposed front and rear yard setbacks of 15 ft.

- b. MMC 19.911.4.A establishes criteria for approving Type II Variance applications.

An application for a Type II Variance shall be approved when all of the following criteria have been met:

- (1) The proposed variance, or cumulative effect of multiple variances, will not be detrimental to surrounding properties, natural resource areas, or public health, safety, or welfare.

The proposed variance to reduce the minimum front and rear yard setbacks to 15 ft will not be detrimental to surrounding properties, natural resource areas, or public health, safety or welfare. The lot is situated at the end of a dead-end street, so a reduction in the front yard setback will not directly impact any residential neighbors. The property to the rear of the property has a covered back porch that appears to match the proposed rear yard on the subject property. The future home is proposed to be located such that it will have a very large side yard (to serve as a back yard), which will result in the neighbors to the northeast and northwest not having a structure directly beside or behind their properties.

The Planning Director finds that this criterion is met.

- (2) The proposed variance will not interfere with planned future improvements to any public transportation facility or utility identified in an officially adopted plan such as the Transportation System Plan or Water Master Plan.

The proposed variance to reduce the minimum front and rear yard setbacks to 15 ft will not interfere with planned future improvements to any public transportation facility or utility identified in an officially adopted plan such as the Transportation System Plan or Water Master Plan.

- (3) Where site improvements already exist, the proposed variance will sustain the integrity of, or enhance, an existing building or site design.

There are no existing improvements on the site.

(4) Impacts from the proposed variance will be mitigated to the extent practicable.

No impacts from the proposed variance to reduce the front and rear yard setbacks to 15 ft have been identified. The subject property is 9,887 sq ft, which significantly exceeds the minimum area of 7,000 sq ft. The subject property has only 1 direct neighbor to the rear and the proposed rear yard setback of 15 ft is not significantly less than the setback on that property. All other development standards on the property will be met.

The Planning Director finds that the approval criteria have been met.

7. As per MMC 19.1001.7.E, this variance request shall expire and become void unless the proposed development completes the following steps:

Obtain and pay for all necessary development permits and start development of the site within 2 years of land use approval (by May 2, 2020).

Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by May 2, 2022).

8. The application was referred to the following departments and agencies on April 16, 2018: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; and the Lewelling Neighborhood District Association. Notice of the application was also sent to surrounding property owners within 300 ft of the site on April 17, 2018, and a sign was posted on the property on April 16, 2018. Comments received are as follows:

- **Janet McAdams, 4426 SE Fieldcrest Dr.:** Ms. McAdams, whose property is northeast of the subject property and does not directly abut the subject property, opposes the variance application. Her concerns are that the neighborhood is a rural area and a modification of the minimum setbacks would result in a continued loss of green space and greater density.
- **Staff response:** *The requested variance represents a total of 10 feet from the required front and rear yard setbacks. This is a very small amount, which is permitted via a Type II variance process, on a property that far exceeds the minimum lot size and will meet all other development standards. Further, the proposed home will be sited such that one of the side yard setbacks will be nearly 100 ft.*

Conditions of Approval

None.

Other requirements

1. As per MMC 19.1001.7.E, this variance request shall expire and become void unless the proposed development completes the following steps:

Obtain and pay for all necessary development permits and start development of the site within 2 years of land use approval (by May 2, 2020).

Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by May 2, 2022).



Dennis Egner, FAICP
Planning Director

cc: Jake and Laura Autry (18505 Columbia Ave, Gladstone, OR 97027)
Louis Bomotti, Property Owner, 3944 X St., Washougal, WA 98671
Planning Commission (via email)
Alma Flores, Community Development Director (via email)
Chuck Eaton, Engineering Director (via email)
Alex Roller, Engineering Technician II (via email)
Samantha Vandagriff, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Mike Boumann and Matt Amos, CFD#1 (via email)
NDA(s): Lewelling (via email)
Interested Persons
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